INDEX

TABLE OF CASES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 341

FLOYD A. WALLIS, *Petitioner,*

v.

PAN AMERICAN PETROLEUM CORPORATION, *Respondent.*

FLOYD A. WALLIS, *Petitioner,*

v.

PATRICK A. McKENNA, *Respondent.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

---

BRIEF FOR PATRICK A. McKENNA, RESPONDENT, IN OPPOSITION

Floyd A. Wallis has petitioned for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in the subject case.

In support of his petition, Wallis has written extensively. He has ranged far and wide in attempting to develop reasons for granting the writ. McKenna hopes to show this Court, directly and concisely, the fallacies of those reasons.

STATEMENT OF THE CASE

McKenna's version of the facts, naturally enough, disagrees with Wallis'. For the purposes here, however, this is unimportant. So rather than restate the chronology of events which culminated in the filing of a law suit against Wallis, McKenna will confine his statement to the following.

Wallis' experience in federal leasing was limited when he contacted McKenna in early 1954. (R. 1249-1251) McKenna's experience, on the other hand, had been considerable. (R. 1448-1449, 1755) An agreement was reached, involving a certain tract of federal land in Plaquemines Parish, Louisiana, which provided that (a) the so-called acquired lands applications for leasing would be filed if everything checked out satisfactorily to McKenna (R. 1772-1773), (b) McKenna was to own a one-third undivided interest therein and in any lease or leases to be issued thereunder, (c) McKenna and Wallis were to share in the expenses thereof, (d) McKenna was to supervise the joint effort in Washington, D. C. and advise Wallis what to do in New Orleans and (e) Wallis was to supervise the joint effort in New Orleans and was to have the discretion and direction with respect to trades respecting the lease or leases. The acquired lands applications were filed in June of 1954 in the name of Wallis. McKenna's one-third undivided interest was confirmed by Wallis' letter of December 27, 1954, a copy of which

is included on pages 159 and 160 of Wallis' petition. Each party paid one-half of the filing fees and advanced rentals in connection with the filing. (R. 14-17, 257-258)

McKenna and Wallis jointly undertook to obtain the federal lease which is evidenced by the facts of the case and by the correspondence between the parties during 1954, 1955 and 1956. In the meantime, however, Wallis secretly negotiated on March 3, 1955 an option with Pan American Petroleum Corporation respecting the acquired lands applications and collected, as part payment therefor, $8,300, a copy of which option is included on pages 161 through 165 of Wallis' petition. Not until March of 1959, four years later, was McKenna first advised of the option and then not by Wallis but by a representative of Pan American. (R. 333-335, 1351-1354, 1816-1822)

As the acquired lands applications were being processed through the Department of the Interior, both parties decided to and did file the so-called public domain application in the name of Wallis on March 8, 1956. A copy of this application bearing Wallis' signature and the Bureau of Land Management's stamped receipt and serial number was forwarded to McKenna on the day of its filing by Harry Edelstein who had been retained by both parties and who had prepared and filed the application. (R. 306, 1796-1797). Both the acquired lands applications and the public domain application covered the identical lands (R. 1252-1253).

Wallis fully admits (1) he did agree to pay one-half of the legal fees of Mastin White, who was retained in early 1955 to represent his and McKenna's interest before the Department of the Interior, which he did not pay (R. 1307), (2) he did agree to pay one-half of the

legal fees of Harry Edelstein, who succeeded Mastin White in November 1955, which he did pay (R. 1322-1323), (3) McKenna paid all of White's fees and one-half of Edelstein's fees for services rendered through March 1956 and until Wallis refused in late April 1956 to continue their joint venture. (R. 1322-1323, 1331-1336) In his letter to McKenna of May 4, 1956, attempting to justify his action, Wallis further confirmed in writing McKenna's interest in the lands in question and in a lease or leases thereon when he wrote:

> ". . . I agreed with you that you were to have a one-third interest in any lease or leases issued to me by the Bureau of Land Management covering these lands . . ."

A public domain lease was issued to Wallis in December 1958 and when he refused to honor his agreement as to McKenna's one-third interest therein, suit was instituted in March 1959 before the United States District Court for the Eastern District of Louisiana. The trial court applied its view of the law of Louisiana, confining McKenna's interest to the acquired lands applications, although all applications related to the same tract of lands. With one judge dissenting, the Court of Appeals reversed and remanded, holding that federal law should govern the case.

WALLIS' REASONS FOR ALLOWANCE OF WRIT

McKenna will comment on Wallis' reasons, and his arguments in support thereof, in the same sequence as they appear in his petition beginning on page 18. He will not attempt, however, to pin down for its true significance, or more appropriately its lack thereof, each of the many cases Wallis cites or each of the many thrusts he trys to argue. Instead, McKenna

will attempt to distill from the petition, as best he can under the circumstances of Wallis' presentation, its underpinning, hoping to expose the fragility thereof.

Wallis' Reason I—Pages 18-22

Wallis states on page 19 that "the decision by this Court in the *Boesche* case, as that decision has been interpreted and applied by the Court below, we submit, will have far-reaching effect, and, will necessarily result in 'clouding,' and rendering questionable, the titles to all such outstanding leases." He thus flatly asserts that 139,000 leases which were outstanding as of June 30, 1960 under the Mineral Leasing Act of 1920 and 159,000 leases under all leasing programs are now in jeopardy; indeed a dramatic, almost catastrophic, consequence in the oil and gas industry. But there we are left suspended with a naked conclusion beyond which he says little except an unsupported assertion respecting what is termed to be the consistent holdings of "the Land Department and the decisions heretofore rendered by this Court and the Circuit Courts involving the interpretation of the Mineral Leasing Act of 1920." Nor does he even broadly indicate in what way such may be the consequence, how and why.

Certainly, if the foregoing were to be the almost cataclysmic reach of the Fifth Circuit's opinion, one wonders why Wallis failed to develop his theory somewhat beyond the point where he states his conclusion and then drops it in the reader's lap; why he failed to clothe it with some indicia of substance. McKenna submits this Wallis cannot do and that his tocsin is no more than the sound of nothingness.

Wallis' Reason II—Pages 22-32

The lack of merit in Wallis' argument on these pages is manifest in his statement on page 23 of his petition that the proviso in § 32 of the Leasing Act "entirely precludes the conclusion of the second opinion" which he caps even further when he asserts on page 26 that the proviso "unqualifiedly precludes" the application of federal law. It is Wallis' view, as he expresses it on page 29, that the proviso "so clearly demonstrates the error of the majority below, that this Court would be justified in granting this petition, and, *immediately reversing the decision below without further proceedings.*" (Emphasis Wallis').

And what is the language of the proviso which Wallis argues as so clearly dispositive of the question? It is that nothing in the Leasing Act "shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States." From this we are advised by Wallis that the "rights of the States" include the "exercise" of a right by a State to determine what law is to govern in a suit filed in a federal court. The absurdity of such a proposition is patent and requires no further comment. And it becomes even more so if such a "right" is attributed to some "other local authority."

The cases cited by Wallis as supporting his view of the § 32 proviso are so clearly inapposite to his contentions with respect thereto that it is difficult to understand any justification for their inclusion.

Wallis' Reason III—Pages 32-63

Wallis' underlying contention on these pages is that "it is apparent that the second decision utilized the *Boesche* case as a vehicle for avoiding the force and effect of decisions relating to Public Land Laws, generally." He then examines these decisions, dividing them into categories A (pages 33-40), B (pages 40-48) and C (pages 49-59). But as a reading of each will show, these is nothing in their so-called "force and effect" which the Fifth Circuit had to avoid in deciding the case below.

Pages 33-40

Wallis' first category of cases is examined under the caption, "The Decisions Relating To The Public Land Laws As Respects The Nature Of Inceptive Rights While The Legal Title Remains In The United States."

United States v. *Buchanan,* 232 U.S. 72 (1913), cited by Wallis on page 35, related to an effort to predicate a criminal indictment upon a federal statute which by its own terms was inapplicable once lands had been entered upon by a homesteader. In *Gauthier* v. *Morrison,* 232 U.S. 452 (1913), as shown in the very quotation from the opinion Wallis himself includes on pages 36 and 37, the Court specifically pointed out that under the homestead laws in force at that time Congress had "pursued the policy of permitting [possessory actions] to be dealt with in the local tribunals according to local modes of procedures." The situation in each was thus far removed from where the Congress, in the words of *Boesche* v. *Udall,* 373 U.S. 472, 477-478 (1962), "under the Mineral Leasing Act has not only reserved to the United States the fee interest in the leased land, but has also subjected the lease to exact-

ing restrictions and continuing supervision by the Secretary [of the Interior]."

Wallis on pages 37 and 38 refers to *Lytle* v. *Arkansas,* 63 U.S. (22 How.) 193 (1859) and *Black* v. *Jackson,* 177 U.S. 349 (1899). The point he intends to establish in citing *Lytle* is not clear. As to *Black,* it should be noted that the questions involved the remedy of injunction against an alleged squatter and his right to trial by jury. The choice of which substantive law to apply was not presented.

There is nothing in the opinion extract from *Marquez* v. *Frisbie,* 101 U.S. 473 (1879), which Wallis cites on page 38, to indicate one way or another whether local or federal substantive law was to be applied by the courts referred to therein.

The only point Wallis apparently suggests on pages 38 and 39 is that *Forbes* v. *Gracey,* 94 U.S. 762 (1876), cannot be reconciled with *Black* v. *Elkhorn Mining Co.,* 163 U.S. 445 (1896). The cases are, however, reconcilable but we see no purpose in burdening this opposition further with respect thereto except to point out that, in both, statutes of Congress clearly governed the disposition of each.

In *Ducie* v. *Ford,* 138 U.S. 587 (1890), cited by Wallis on pages 39 and 40, the only issue before the Court was whether the alleged facts were sufficient to take the case out of the Montana statute of frauds. The question of whether federal law should instead apply was not raised. Even if it had, however, it should be noted that the result would have been no different since, unlike the law of Louisiana as applied by the trial court in the case at bar, the law governing

the application of the Montana statute of frauds was similar to that generally followed in the other jurisdictions. (138 U.S. at 592).

Pages 40-48

Wallis' second category of cases are included under the caption, "Decisions Relating To The Public Land Laws As Respects The Equitable Power Of The Courts And The Appliation Of Federal Law."

Wallis appears to ignore the context when on page 41 he refers to, and quotes from, *Johnson* v. *Towsley,* 80 U.S. 72, 85 (1871). The context of the quotation he uses involves the situation where in a contested proceeding the Interior Department has issued a federal land patent to one of the adverse parties and the question whether under such circumstances a court should have jurisdiction to determine if "in equity and good conscience, and by the laws Congress has made on the subject, it ought to go to another." The Court answered the question affirmatively, taking the view which is, and has been long, universally recognized. There is nothing whatever in this well-known concept which even remotely supports Wallis' contentions as to the showing McKenna must make, as he states it in the first incomplete paragraph appearing on page 42 of his petition.

The thrust of Wallis' arguments on pages 42 through 48, which springs generally from his view of *Johnson* v. *Towsley,* is so clearly not pertinent to the case at bar that McKenna sees no reason to trace, in rebuttal, the many turns it takes which eventually leads to nowhere.

Pages 49-59

On these pages Wallis cites cases of his third category which he calls, "Decisions Relating To And Interpreting The Mineral Leasing Act, Are Contrary To The Decision Below."

He leads off with *Hodgson* v. *Federal Oil & Development Co.,* 274 U.S. 15 (1927). After conceding on page 52 that the Court applied federal law "to the extent permissible," Wallis goes on to state that the Court also applied the Wyoming law of co-tenancy. But the Court simply held, saying nothing about Wyoming law, that there was a failure "to allege definite facts (not mere conclusions) sufficient to show some fiduciary relationship" between the parties "unless such a relationship necessarily arose because of a co-tenancy." (274 U.S. at 19). The Court then stated the general law relating to co-tenancy, as well as the exception thereto, citing cases from other jurisdictions in support thereof and noting thereafter that there was "no opinion by the courts of Wyoming to the contrary." McKenna suggests that if the Court were, in fact, applying Wyoming law, it would have said so positively and not have approached the application thereof negatively.

Turning to *Blackner* v. *McDermott,* 176 F. 2d 498 (10th Cir. 1949), which Wallis cites on page 56, it should be noted that no state statute was interposed to defeat a joint venture. Accordingly, there was never any issue raised by the parties as to which law applied. In the absence thereof, the Court simply applied the common law of Wyoming in sustaining the joint venture.

On page 57, Wallis states, in connection with the cases he cites under his third category, that "these cases

treat the holders of such 'rights' as being *entirely* analogous to those who hold such 'inceptive rights' under the Public Land Laws, where the 'legal title' is vested in the United States." (Emphasis supplied). Only two cases cited by Wallis under his third category bear directly on this principle he is attempting to assert. One is *Witbeck* v. *Harde nan,* 51 F. 2d 450 (5th Cir. 1931), and the other is *Pan American Petroleum Corporation* v. *Pierson,* 284 F. 2d 649 (10th Cir. 1960).

As to the appropriateness, or lack thereof, respecting the citation of *Witbeck,* one needs only to refer to the extract Wallis uses on page 55 of his petition and to restore it to the context in which it appears on page 452 of 51 F. 2d, as follows:

> ". . . The reason is that in such cases the courts refuse to interfere until the Land Department has done its work and issued a final patent, thus ending the proprietary interest of the United States in the land and making the contest over it a matter of private interest only . . . Under the Leasing Act the land of the United States is not to be conveyed by patent, but leased, so that the proprietary interest of the United States in the land never ceases. Nevertheless, the lease is the final action of the Land Department in disposing of the land, and in this respect is analogous to a patent . . ."

Similarly in *Pan American,* one needs only to read the extract therefrom set forth in the footnote on page 57 of Wallis' petition, adding this language from the opinion which immediately follows at pages 654 and 655 of 284 F. 2d, "Upon the performance of this last act, administrative power to annul or cancel ends and

judicial power begins."* In other words, Wallis to the contrary notwithstanding, the only analogy the Court in each case draws relates to the point at which a court will interfere to review a grant by the government of either a land patent or a mineral lease.

Pages 59-63

Wallis in concluding his argument under his third major reason for allowing the writ, states on page 63 that, "We submit that the *Boesche* case did not render inapplicable to the 'rights' of a lessee, the decisions relative to inceptive 'rights' under the Public Lands Laws, generally, nor did it intend to relegate such 'rights' of a lessee to any inferior or different status."

Since the foregoing is Wallis' argument at this point, McKenna sees no need to comment further on ground that has already been covered and on the *Boesche* case which speaks clearly for itself, as do the opinions of the Court of Appeals below, except to point out again that the premise, which Wallis says "the *Boesche* case did not render inapplicable," lacks totally in merit as such premise may relate to the case at bar.

Wallis' Reason IV—Pages 63-76

At the conclusion of his petition, beginning on page 73, Wallis argues his views on options, a question more directly affecting Pan American Petroleum Corporation in its suit against Wallis. As to the preceding pages under this final reason for allowing the writ, a brief comment appears to be appropriate as regards

---

* This Court in Boesche v. Udall, 373 U.S. 472 (1962) refused to agree with the principle stated in this case that once a federal oil and gas lease had been issued the Secretary of the Interior was without statutory authority to annul or cancel the lease because of events preceding the issuance of the lease.

Wallis' assertion on page 67 in connection with the opinions of the Court below that, "Here then is the clear intent of Congress that § 30 of the Act does not apply to the lease here involved, in light of § 30(a), yet the opinions below relied, in the main, upon the erroneous assumption that § 30 applied, and the fact that an 'assignment' of a lease 'must be approved by . . . the Secretary.' " The best evidence of this contention's total invalidity can incontrovertibly be seen in what the Court below actually said, as set forth on page 135 of the petition:

> ". . . Furthermore, assignments or subleases of all or part of the acreage included in an oil or gas lease must be approved by the Secretary. See *Boesche* v. *Udall*, 1962, 373 U.S. 472; 30 U.S.C.A. § 187a [§ 30(a)]. The Secretary is required to disapprove the 'assignment' or 'sublease' only for lack of qualification under the Act or for lack of sufficient bond. See 30 U.S.C.A. § 187a [§ 30(a)]. Nowhere in the Mineral Leasing Act of 1920 are the terms 'assignment' and 'option' defined.
>
> "The posture of the instant case is interstitial. The Secretary has granted a lease to Wallis. We deal with claims that are, in essence, an alleged 'option' and an alleged 'assignment' but which, ultimately, must be approved or registered with the Secretary . . ."

Yet Wallis insists the opinions relied on § 30, although the Court cites § 30(a).

CONCLUSION

The Fifth Circuit correctly disposed of the case at bar in its opinions below. Even following the issuance of a federal oil and gas lease, the Congress "has not only reserved to the United States the fee interest in

the leased land, but has also subjected the lease to exacting restrictions and continuing supervision by the Secretary." (373 U.S. at 477-478). Any assignee of the lease, whether in whole or in part, necessarily takes an interest in the federal public domain and becomes subject to the foregoing "exacting restrictions and continuing supervision." The scheme of federal oil and gas leasing is entirely federal in scope and can in no way tolerate the interdiction by state law as to who can or cannot, or who may or may not qualify to, participate in an interest in the leasehold.

The opinions of the Fifth Circuit set forth the basis upon which it must necessarily follow that only federal law must apply to the case at bar.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

E. L. BRUNINI
First National Bank Building
Jackson, Mississippi 39205
Attorney for
Patrick A. McKenna